

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DOMINICK SMITH,

Petitioner,

v.

CIV 15-0441 MV/KBM

JEFF WRIGLEY, Warden, and
HECTOR BALDERAS, New Mexico
Attorney General,

Respondents.

ORDER FOR ADDITIONAL BRIEFING

THIS MATTER is before the Court on Petitioner Dominick Smith's Petitioner under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. *Doc. 1*. In Ground Two of his Petition, Smith maintains that the State of New Mexico violated a sentencing agreement he entered into with it in exchange for a "no holds barred" interview. *Id.* at 7. Pursuant to the "Agreement and Stipulation Between Defendant and the State," the State promised that "[i]f convicted of any of those crimes charged, Defendant's cumulative sentences will be at the discretion of the trial judge provided that total exposure will be 'capped' at twenty years imprisonment." *Doc. 9-4* at 11. Smith asserts that this agreement was violated because he was later sentenced to 32 years imprisonment of which 12 years was suspended. *Id.* Respondents' Answer to Smith's petition does not address the legal merits of this claim but merely states in passing, "This 'cap,' however, was 'at the discretion of the trial judge.'" See *Doc. 9* at 13. The Court finds that further briefing on this issue is necessary.

Ground Two of the Petition also asserts that the state trial judge erred by inadequately addressing a question from the jury that, in Smith's view, improperly implicated the theory of felony murder which was not charged in his case. *Doc. 1* at 7. This claim is also not addressed in Respondents' Answer. *Doc. 9*. The Court finds that briefing on this issue is necessary to properly resolve the claims.

Wherefore,

IT IS HEREBY ORDERED that Respondents shall file additional briefing by Friday, April 8, 2016, addressing the merits of Smith's claims that: (1) his sentence violated the agreement entered into between himself, and the State, and (2) the trial judge improperly responded to the jury's question.


UNITED STATES CHIEF MAGISTRATE